

Abusive Constitutional Lip Service

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Amid Turkey's heated agenda of constitutional politics during the past few years (which included a coup attempt, a constitutional referendum, general elections, mayoral elections with some reruns, and the recent foreign policy crisis) one issue seems to have received little to no attention: President Erdogan's repeated call for reinstating the death penalty. Can Erdogan reinstate the death penalty? No, simply because he doesn't have enough political support. But that isn't the point. *The point is how Erdogan uses the (unfulfillable) constitutional promise to reinstate the death penalty to consolidate his base.* To this end, Erdogan's use of constitutional lip service points to and exemplifies an innovative use of constitutions by populist leaders (and perhaps others too): even when confronted with constitutional barriers to accomplishing their constitutional goals (e.g., reinstating the death penalty), astute politicians will distance themselves from those barriers and tell the public that they would accomplish those goals if it weren't for the constitution. That, in turn, has the potential to increase electoral support for populist leaders. *This is a double win for the populist: no actual effort is spent and thus no political and financial resource exhausted to actually accomplish the constitutional goal, but the political benefits are still reaped as if the goal were accomplished.*

To be sure, though, we don't know if Erdogan *really* wants to reinstate the death penalty. But let's bracket that question for a moment and focus on what Erdogan says he wants. The July 2016 coup attempt reignited debates about reintroducing the death penalty. At a rally held in August 2016 – shortly after the coup attempt – in his address to a crowd of millions, Erdogan [said](#): “It is the Turkish parliament that will decide on the death penalty...I declare it in advance, I will approve the decision made by the parliament.” He further reasoned: “They say there is no death penalty in the EU... Well, the US has it; Japan has it; China has it; most of the world has it. So they are allowed to have it. [...] Sovereignty belongs to the people, so if the people make this decision I am sure the political parties will comply.” And ever since 2016, he has been a vocal supporter of reintroducing the death penalty. In as recent as March 2019, again during a rally, he [repeated](#) his assertion that “if parliament passes such legislation, [he] will approve it.” In the same speech, in an unusual moment of self-reflection and criticism, he also said: “We have done wrong by removing the death penalty. It offends me to feed those in prison, those who martyred 251 of our citizens, police officers and soldiers on the night of the July 15, 2016 coup attempt, even though they are serving life sentences.” He went as far as to suggest that New Zealand, at the time devastated by the Christ Church massacre, should mete out a fitting punishment to the perpetrator. That arguably positioned Erdogan not only as an advocate of capital punishment domestically but also internationally (assuming he had the death penalty in mind when he urged New Zealand to punish the Christ Church massacre perpetrator “fittingly”).

Erdogan's invocation of Japan, China, the US, and, to use his own words, “most of the world”, as comparative authority to legitimate Turkey's reinstatement of the death

penalty, fits squarely within an ever-increasing global practice that I term “[abusive comparativism](#)” whereby comparative examples are invoked (often misleadingly) to legitimate emulating them. But *can* he and *would* he emulate countries that retain the death penalty? My answers to both of these questions are no.

Can Erdogan Reinstate the Death Penalty?

No. Why? Because he doesn’t have the numbers. As already discussed [elsewhere](#), reinstating the death penalty requires amending the Constitution, specifically Article 38 which expressly outlaws it. Amendment can take two forms: with or without a referendum. For an amendment to be put to a constitutional referendum, at least 3/5 of the membership (of a total of 600 MPs) needs to agree, that is, 360 MPs at the very least. [The current allocation of seats in the Parliament](#) shows that the AKP has 291 MPs; its *de facto* coalition partner, the right-wing Nationalist Action Party (tr. *MHP*), has 49. There is also 1 MP from another right-wing nationalist party (tr. *BBP*) who we can reasonable assume would vote with the AKP bloc. In sum, the *de facto* coalition has a total of 341 members –19 members short of the requisite number to put the question to a constitutional referendum. (The second form of amending the constitution directly and without a referendum needs 400 MPs backing up the proposal, which isn’t a realistic path to pursue and which is why I omit discussing it.)

The question for the political realist is whether Erdogan can garner the support of 19 more MPs. And while the center-right opposition party (tr. *İYİ Parti*) is the most likely party from whose membership pro-death penalty votes can be secured, given the political polarization Erdogan has created with his own hands, it is unlikely that votes from other parties can be “bought” (or “secured”, to put it more politely). Additionally, even if Erdogan were to secure the approval of a total of 360 members, what would be the demands of those 19 “defectors” as a price for switching their allegiances? Would it be too pricy (e.g., a cabinet membership) for Erdogan to accept? And then there is the question of the political and financial cost of holding yet another referendum in Turkey where people are in fact tired of having to go to the ballot box. While popular sentiment, like in many countries, is, on the balance, pro-capital punishment, putting the question to the ballot box will require serious economic and political capital investment by the AKP. What is more, the referendum and the rallying and campaigning that would accompany it could raise the Nationalist Action Party (Erdogan’s main *de facto* coalition partner in Parliament and the staunchest advocate of the death penalty) to a level of domestic prominence that Erdogan would want to avoid. If the rhetoric of the Nationalist Action Party were even more populist and appealing to masses than Erdogan’s (“when they go low, we go lower”) that would be a threat to Erdogan’s already-shaky monopoly over Turkish populist political discourse.

Would Erdogan Reinstate the Death Penalty?

Let’s assume Erdogan found 19 more votes in Parliament to back up his plan to amend the Constitution by agreeing to concede certain “benefits” to those 19 votes (here, I assume that those 19 votes will want something in return, but I may be too

much of a political realist here – perhaps some would just break with their party lines and vote merely based on their personal pro-capital punishment convictions). Let's assume further that Erdogan assessed the financial and political risks involved in putting the question to a referendum. Would Erdogan still want to actually go forward with the referendum?

No. Why? Enter external constraints. Reinstating the death penalty would bring accession negotiations carried out with the EU to a *formal* end. I consciously use the word “formal” because the negotiations can be assumed to be going nowhere as of now – but that's still not the same as a formal end to negotiations, which would have a vast array of symbolic, political, and economic repercussions for Turkey. What is more, Turkey's membership in the Council of Europe would be put to substantial risk, to put it mildly. Foreign investment, already in decline, would continue to diminish, which would all collectively result in a declining domestic political support for the AKP, which Erdogan, quite understandably, wishes to avoid at all cost. This final point is important: to reiterate, Erdogan, I believe, does not actually want to reinstate the death penalty. Perhaps his sincere personal and even religious (and now I am just speculating) convictions are such that the death penalty ought to exist as a form of punishment, but reintroducing it would put Turkey under too much international pressure that would, in turn, convert to economic pressure that would, in turn, result in a weakening of his electoral base. And even if only to avoid that from happening, Erdogan can be assumed to be against actually reinstating the death penalty. (One important caveat would be a scenario, in which putting the question to a referendum would result in an increase in popular support for the AKP – currently not the case. But if somehow that ever happens to be the case, all of the analysis here goes out the window.)

The Irrelevance of the Death Penalty Debate and Erdogan's Double-Win

Should all this comfort us? Sure, knowing that a variety of internal and external factors constrain Turkey's political elite from reinstating the death penalty is perhaps a cause for celebration. But not a very joyous celebration, I must hasten to add. When we give it some additional thought, especially considering my assertion that Erdogan actually never wanted to reintroduce the death penalty, a different picture emerges – one in which Erdogan enjoys a double-win.

By insisting publicly that the death penalty must be reinstated in full awareness that it would be very difficult to reinstate it as a matter of constitutional law, Erdogan does two things: First, he connects with the widely-shared ethos of not just his own voter base, but also with others who perhaps admire him for his “courageous” call for reinstating the death penalty. Second, and this is the important point, he still reaps the benefit of having made such a call, *even if he can't actually deliver on it*. Remember Erdogan's statements at various rallies that I alluded to in the beginning of the post, in which he repeatedly invokes the Parliament as the constitutional body to make the decision to reintroduce the death penalty, which he would then approve. The reference to the Parliament has a dual purpose: it, first and foremost, creates a

largely misleading façade that portrays the Parliament as an independent decision-making body, sufficiently insulated from the President (which is emphatically not the case in present-day Turkey). And second, it also enables Erdogan to play the classic politician game of “finger-pointing”. Erdogan’s finger-pointing is probably intended to have listeners (already sympathetic toward reintroducing the death penalty) think in the following way: *it’s the Parliament that isn’t making the decision. It is because of them, not Erdogan, that Turkey has not been able to reintroduce the death penalty. If it were only up to Erdogan, he would surely reinstate the death penalty. Ergo, Erdogan is not to blame for not delivering on his promise.*

Simply put, celebrating Erdogan’s “defeat” in not being able to reintroduce the death penalty ever since 2016 is like celebrating victory in a battle that Erdogan never *actually* fought. All he did was deliver constitutional lip service, not *actually* follow through (and thus not have to invest political and financial capital in the struggle), but still excite the masses and consolidate his pro-capital punishment base. If anything, Erdogan seems to have emerged victorious from a battle he never fought. The power of constitutional lip service should not be underestimated.

